

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING
ARM 32.3.220 and 32.3.401	)	ON PROPOSED AMENDMENT
pertaining to semen shipped into	)	AND ADOPTION
Montana and brucellosis definitions,	)	
and the adoption of new rules I	)	
through V pertaining to designated	)	
surveillance area and penalties	)	

1. On November 23, 2010 at 3:00 p.m. the Department of Livestock (department) will hold a public hearing at the fairgrounds in Twin Bridges, Montana, to consider the amendment and adoption of the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on November 15, 2010 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

32.3.220 SEMEN SHIPPED INTO MONTANA; PERMIT REQUIRED

(1) through (6) remain the same.

~~(7) Equine semen from all equine, used for production of semen in artificial insemination, must test negative for:~~

~~(a) equine infectious anemia; and~~

~~(b) equine viral arteritis every six months by a test approved by the state veterinarian.~~

(8) and (9) remain the same but are renumbered (7) and (8).

AUTH: 81-2-102, 81-20-101, MCA

IMP: 81-2-102, 81-20-101, MCA

REASON: Testing of equine semen is no longer required in this section.

32.3.401 DEFINITIONS (1) The "administrator" is the individual as defined in 81-1-301, MCA, or that individual's designee.

(1) remains the same but is renumbered (2).

(3) An "approved brucella vaccine" is a brucella product approved by and produced under license of the United States Department of Agriculture for injection into cattle or bison to enhance their immune response to brucella.

(4) "Bison" are all animals in the genus bison.

(5) remains the same.

(2) (6) "Brucellosis" is an the contagious, infectious, and transmissible communicable disease of animals and man humans caused by bacteria of the genus brucella, brucella abortus abortus, brucella suis, or brucella melitensis, which are referred to in these rules collectively as brucella organisms or individually as a brucella organism. Disease control in animals shall be in compliance with Title 9 CFR part 8 and USDA APHIS brucellosis eradication Uniform Method and Rules (UM&R).

(a) Brucellosis is also known as bangs disease and undulant fever.

(7) A "brucellosis surveillance herd management plan" (herd plan) is a document outlining brucellosis mitigation and surveillance practices that will be or have been instituted by an individual designated surveillance area producer or DSA production unit.

(a) To reflect these practices, a "herd plan" may also outline variances to some testing requirements.

(b) A "herd plan" is mutually agreed upon by the producer and the Department of Livestock and should be reviewed annually.

(8) "Cattle" are all animals in the genus bos.

(9) A "Designated Surveillance Area (DSA)" is a geographically defined region as specified in [New Rule II] in which cattle may be exposed to brucellosis from wildlife.

(10) A "Montana approved livestock market" is a livestock market that is approved by the United States Department of Agriculture (USDA) and/or the administrator. The animals must be secured within the market facility.

(11) An "official adult vaccinate" (AV) is a sexually intact animal of the genus bos or bison vaccinated with an approved brucella vaccine, using approved procedures, and of an age older than that permitted for official calfhood vaccination.

(12) An "official brucellosis test" (test) is a laboratory protocol for the brucellosis classification of animals as approved by the administrator.

(13) An "official calfhood vaccinate" (OCV) is an animal vaccinated at an official calfhood vaccination eligible age with an approved brucella vaccine using approved procedures.

(14) "Official calfhood vaccination eligible animals" (OCV eligible) means sexually intact female cattle or domestic bison of the age, as designated by the administrator, which may be vaccinated with an approved brucella vaccine to become an official calfhood vaccinate.

(15) "Official Individual Identification" is the unique individual identification of cattle or domestic bison as approved by the administrator.

(4) remains the same but is renumbered (16).

(3) remains the same but is renumbered (17).

(18) A "recognized slaughtering establishment" is any slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or a state meat inspection act.

(19) "Test eligible animals" means sexually intact cattle or domestic bison twelve months of age or older.

(20) "Vaccinate" (as it pertains to [New Rules I-VI]) refers to Official Adult Vaccination or Official Calfhood Vaccination.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA  
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110,  
81-2-111, MCA

REASON: The preceding terms are inadequately defined or absent in existing rule. These definitions provide for the readability and clarity of these laws and rules. The definitions are derived from scientific literature and/or are typical meanings of the words.

4. The proposed new rules provide as follows:

NEW RULE I DESIGNATED SURVEILLANCE AREA (1) The designated surveillance area (DSA) of Montana is described as:

- (a) Park County – south of Interstate 90;
- (b) Gallatin County – south of Interstate 90 from Park-Gallatin County line to Bozeman, then south of Highway 84 from Bozeman to Gallatin-Madison County line;
- (c) Madison County – south of Highway 84 from Gallatin-Madison County line to Norris, then east of U.S. Highway 287 from Norris to Ennis, then south of State Highway 287 from Ennis to Alder, then east of State Rd. 357 (Upper Ruby Road - becomes Centennial Divide Road) to Madison-Beaverhead County line; and
- (d) Beaverhead County – from Madison-Beaverhead County line, east of Forest Route 100 (becomes Road 204 - Gravelly Range Road), continuing east of 204 to Stibel Lane (Road 202) - south of South Valley Rd. (State Road 509) approximately 1 mile, then east of Price Peet Rd. (Road 207) running south to the Montana/Idaho border.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA  
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110,  
81-2-111, MCA

REASON: The DSA circumscribes the geographical area in southwest Montana where brucellosis-positive elk are known or thought to exist during the hunting season or at other times of the year. In this area, co-mingling of elk and livestock, and livestock exposure to tissue containing brucella are possible. This area has been defined by MDOL with consultations from Montana Department of Fish, Wildlife and Parks (FWP). Inputs from FWP include professional knowledge as well as data on distribution, movement patterns, numbers, and brucellosis testing results compiled during routine elk surveys, research, hunter check stations, or other management actions.

NEW RULE II ANIMAL IDENTIFICATION WITHIN THE DSA (1) All sexually intact cattle and domestic bison 12 months of age and older within the DSA must be identified with official individual identification.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA  
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110,  
81-2-111, MCA

REASON: Individual identification is imperative for disease surveillance and traceability.

NEW RULE III TESTING WITHIN THE DSA (1) The following official brucellosis test requirements apply to all test eligible animals that are or have been located within the DSA boundaries at any time between January 15 and June 15 of any calendar year:

(a) an annual test;  
(b) a test within 30 days prior to movement out of the DSA or change of ownership, unless that movement is to an approved Montana livestock market or directly to a slaughter facility that will test upon arrival.

(2) A test completed July 16 or after is accepted through February 15 of the following year.

(3) Other variances or exceptions to requirements will be considered on an individual basis by the administrator based on a brucellosis surveillance herd management plan.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA  
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110,  
81-2-111, MCA

REASON: Testing within the DSA is intended to prevent the movement of potentially infected cattle out of an area in which diseased wildlife exist. Additionally, testing associated with this area promotes trading partner confidence in the disease-free status of exported livestock from the entire state of Montana. It is consistent with the USDA-APHIS concept paper and the new direction of the brucellosis eradication program. Animals associated with the DSA may be tested multiple times within a 30-day period due to multiple changes in ownership and/or movement, reflecting the continued risk of exposure to wildlife reservoirs.

NEW RULE IV VACCINATION WITHIN THE COUNTIES IN WHICH THE DSA IS LOCATED (1) Official Calhoun Vaccination (OCV) is required within the entirety of counties in which the DSA is located.

(a) Female cattle or domestic bison that are not OCV eligible may become Official Adult Vaccinates (AV) following a negative brucellosis test.

(b) Variances or exceptions to requirements will be considered on an individual basis by the administrator.

AUTH 81-2-102, 81-2-103, 81-2-104, MCA  
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110,  
81-2-111, MCA

REASON: Vaccination is imperative for the protection of the breeding population in Montana. Required OCV within the counties in which the DSA is located simply makes mandatory the brucellosis program utilized by USDA-APHIS to eradicate brucellosis from livestock in the United States and improves the immunity of, and reduces the number of nonvaccinated animals within the breeding herd throughout the entire state of Montana.

NEW RULE V PENALTIES (1) Persons found to be in violation of rules or laws relating to brucellosis are subject to:

(a) a \$100 fee to the Department of Livestock, per animal, for failure to comply with ARM 32.3.438 (REF 81-2-102(c), MCA);

(b) any additional departmental expenses regarding the investigation if a violation of law has taken place, as defined in 81-2-109, MCA.

(2) Disputes will be heard by the Board of Livestock according to contested case rules of MAPA.

(3) In addition to the fees and expenses imposed in (1) any person, persons, firm, or corporation that fails to comply:

(a) may be guilty of a misdemeanor as described in 81-2-113, MCA; or

(b) may face civil liability as described in 81-2-114, MCA.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA

IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-109, 81-2-110, 81-2-111, 81-2-113, 81-2-114, MCA

REASON: It will likely be a rare occurrence that a penalty or noncompliance fee is warranted. However, a producer who fails to comply will be required to pay a fee to the MDOL as a penalty in addition to paying for expenses such as the hourly wage of a MDOL investigator, per diem, mileage, lodging, and other miscellaneous expenses as per 81-2-102(c), 81-2-109, MCA

ECONOMIC IMPACT NEW RULE I: The boundaries themselves create no economic impact. However, a boundary may transect/divide a production unit or ranch and therefore may require a change in management due to the variation in risk (and therefore testing requirements) on each side of the boundary.

NEW RULE II: Vaccinated animals are officially individually identified as part of the required procedure at the time of OCV. Tagging cost is generally built into the cost per head of OCV. USDA silver tags are another choice, supplied to the producer for individual identification of other classes of animals at no cost. RFID tags are currently supplied to DSA producers at no charge. Additional labor may be required for retagging. However, if done at the same time as another handling event, the time required and the identification cost is negligible.

NEW RULE III: One economic concern includes the need for an additional handling event. Most producers handle their adult cattle at least once annually either for some management event (pregnancy check, etc.). To address this, the Montana Department of Livestock (MDOL) has in most cases allowed for the blood sampling to occur concurrently with routine ranch operations to minimize the number of handling events and to make efficient use of labor already available. Additionally,

MDOL has frequently allowed for field personnel to be available for blood sampling or to assist the local veterinarian and producer with paperwork, sample handling, and labor. Animals originating from within the DSA moving through a Montana Livestock Auction for change of ownership do not need to be handled on the ranch; they are tested at the market or at slaughter at no additional cost to the seller.

Shrink (weight loss) is a possible concern. Anytime livestock are handled some shrink will occur. For this reason, blood sampling is typically scheduled at the same time as another routine handling event and therefore, shrink is already expected. Generally, testing is done on adult cattle not immediately going for sale or slaughter making this concern negligible.

Another concern is damage and wear to equipment and/or handling facilities. Anytime livestock are handled, some wear will occur along with the possibility of damage to equipment or facilities. For this reason, test sampling is typically scheduled at the same time as another handling event. Additionally, MDOL maintains some cattle handling equipment for use if needed. As of July 1, 2010 two dollars (\$2) became available for reimbursement to the producer for each sample taken on the ranch to help defray equipment and labor costs.

NEW RULE IV: Approximately 70 percent of all female calves are OCV each year in Montana. Within the DSA this percentage is likely higher. Because the majority of producers in this area are currently practicing OCV, the additional impact will be minimal. OCV typically costs the producer \$2-\$5.50 per head.

NEW RULE V: Penalties do not apply to producers in compliance with requirements. A "typical" noncompliant producer will move only a couple test eligible or non-OCV animals and therefore the fee reflects an expense that reasonably reduces or altogether removes any single financial benefit of noncompliance. Some producers may refuse to comply with entire herd testing and may have fees associated that reflect herd sizes of 20 or more cattle.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to [cmackay@mt.gov](mailto:cmackay@mt.gov) to be received no later than 5:00 p.m., November 29, 2010.

6. An electronic copy of this proposal notice is available through the department's web site at [www.liv.mt.gov](http://www.liv.mt.gov).

7. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Christian Mackay"; or e-mailed to

cmackay@mt.gov. Request forms may also be completed at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

#### DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ George H. Harris  
George H. Harris  
Rule Reviewer

Certified to the Secretary of State October 18, 2010.